

**REMARKS**

This amendment responds to the Office Action mailed May 24, 2004. Independent claim 1 has been amended to clarify that the data delivery unit is in the drive-through facility, and not located somewhere else.

In paragraphs 2 and 3 of the Office Action, the Examiner rejects claims 1, 2, 4, 7-13, 16, 20, and 24 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,526,335 to Treyz et al. (see Treyz). The Examiner's rejection on this ground is respectfully traversed.

Among the limitations of independent claims 1, 7, 10, 13, and 16 which are neither disclosed nor suggested in the prior art of record is, e.g., a "data delivery unit comprising a memory storing [ ] data therein; . . . reads requested data out of said memory, and transmits said data to said portable terminal when said automobile is proximate to said data delivery unit." See Claim 16. Each independent claim requires that the data delivered to the automobile is stored in the data delivery unit. The claimed data delivery system and method, including the advantages obtained thereby, are neither disclosed nor suggested in the prior art of record.

Treyz is directed to an automobile personal computer system. Such a system can be used in conjunction with the present invention to download data from the present invention. Treyz discloses that the automobile personal computer receives audio content from a terrestrial broadcast source or downloads Internet data from a satellite link (see Figs. 114 and 119). Treyz also teaches that the automobile personal computer can download software or other materials at, for example, a gas station or merchant using a local wireless link (see step 694

in Fig. 52). Treyz, however, fails to teach or suggest the use of a memory in a data delivery unit at such merchant, the storage of data transmitted to the portable terminal in such memory when the automobile is proximate to the indicated location.

The portion of Treyz cited by the Examiner as teaching this feature, namely col. 47, lines 42-45, discloses that the merchant stores the transmitted data in a memory card or other storage medium for physical downloading (i.e., transfer and insertion) into the portable computer. Treyz does not disclose that the software or other materials that are downloaded over a remote wireless link are stored in a memory at the merchant's facility. In fact, Treyz does not provide any further disclosure of the equipment used at the merchant's facility for providing data to the automobile personal computer. In the absence of any disclosure or suggestion of these features of the invention, these claims are believed to be in condition for allowance.

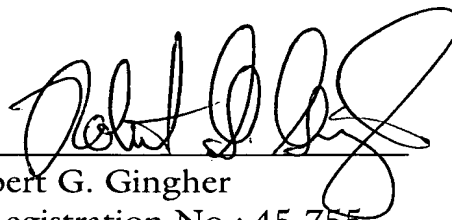
Claims 2-6, 8-9, 11-12, 14-15, 17-18, and 19-26 depend from claims 1, 7, 10, 13, and 16, and include all the limitations found therein, and therefore are allowable for the same reasons. In addition, these claims recited additional limitations which, in combination with the limitations of these claims, are not disclosed or suggested in the art of record.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Dated: July 29, 2004

Respectfully submitted,

By



Robert G. Gingher

Registration No.: 45,755

DICKSTEIN SHAPIRO MORIN &  
OSHINSKY LLP

1177 Avenue of the Americas - 41st Floor  
New York, New York 10036-2714

(212) 835-1400

Attorney for Applicant

RG/mgs/ll2  
Attachments